

**U.S. Department of Energy
Federal Activities Inventory Reform (FAIR) Act of 1998 Commercial Activities
Inventory (CAI) and Office of Management and Budget (OMB) Required
Inherently Governmental Activities Inventory**

On this page you will find information on the statutory and regulatory requirements concerning the review of Federal agency activities considered to be commercial in nature. Specific to the Department of Energy (DOE), you will find DOE Background pertinent to any review of its FAIR Act CAI, DOE's FAIR Act CAI challenge and appeal instructions.

DOE Background Pertinent to Review of Its FAIR Act CAI

The mission of DOE is to foster a secure and reliable energy system that is environmentally and economically sustainable; to be a responsible steward of the Nation's nuclear weapons; to clean up the legacy of environmental damage at its facilities; to lead in the physical sciences and advance the biological, environmental, and computational sciences; and, to provide premier scientific instruments for the Nation's research enterprise.

In conducting its programs, DOE utilizes a nationwide complex consisting of Headquarters and Field organizations, including the National Nuclear Security Administration, National Laboratories, nuclear weapons production plants, power marketing administrations, and special purpose offices. Historically, a significant portion of DOE work has been carried out by industrial, academic and nonprofit organizations managing and operating DOE-owned plants and laboratories under contracts with DOE.

These government-owned, contractor-operated facilities employ over 100,000 contractor personnel. Total DOE budget expenditures for fiscal year 2001 were approximately \$21 billion. This amount includes the Department's annual budget authority for the year, plus prior year authorizations, work-for-others funding, and recouped funds. Of this amount approximately \$20.8 billion was obligated under contracts and financial assistance awards. Close to \$15 billion was obligated on the Department's laboratory, environmental restoration and other site and facility management contracts. In addition, approximately \$4 billion was obligated to purchase other goods and services, and another \$1.8 billion was obligated for financial assistance (i.e., grants and cooperative agreements). DOE is highly leveraged with regard to the number of Federal employees working to fulfill its missions, including project and contract management, versus the commercial and other non-Federal personnel performing its work.

DOE FAIR Act CAI Challenge and Appeal Instructions

CAI CHALLENGES

To be considered valid, a challenge must meet all of the requirements in paragraphs 1-9 below. Challenges that do not meet all of these requirements will be rejected.

Challengers are encouraged to read and become familiar with the FAIR Act and the Office of Management and Budget (OMB) Circular A-76, "Performance of Commercial Activities," and its Supplemental Handbook.

1. The challenge must be in writing. Attempts to make a challenge verbally via the telephone, verbally, by voice mail and electronic mail are not acceptable and will be rejected.
2. The challenge must be sent by United States mail, express delivery or similar service, or facsimile transmission to:

U.S. Department of Energy
Office of the Executive Secretariat
1000 Independence Avenue, S.W.
Washington, DC 20585
Attn: FAIR Act Inventory Challenge

facsimile transmission telephone number: 202-586-4403

Challenges sent or delivered to other offices or locations will be rejected.

3. The challenge must be submitted within 30 working days after the date that the OMB notice, stating that the DOE inventory is available to the public, appeared in the Federal Register. That date is the date that the inventory actually becomes available to "interested parties" through this website.
4. The person or organization making the challenge must be an interested party. Interested parties are defined in the FAIR Act as:
 - (1) A private sector source that (A) is an actual or prospective offeror for any contract or other form of agreement to perform the activity; and (B) has a direct economic interest in performing the activity that would be adversely affected by a determination not to procure the performance of the activity from a private sector source.
 - (2) A representative of any business or professional association that includes within its membership private sector sources referred to in (1) above.
 - (3) An officer or employee of an organization within an executive agency that is an actual or prospective offeror to perform the activity.
 - (4) The head of any labor organization referred to in section 7103(a) (4) of Title 5, United States Code that includes within its membership officers or employees of an organization referred to in (3) above.
5. The challenger must explain why the challenger qualifies as an "interested party" in the challenge letter.
6. The challenge must identify the activity being challenged as specifically as possible, that is, it must give a sufficient description of the activity being challenged so the Departmental element can identify it. For example, the challenger may reference the

inventory entry for challenges to activities included on the inventory, or provide activity, function, organization, location, state, or other identifying information for challenges to activities that were excluded from the inventory.

7. The challenge must state whether the challenger is challenging the decision to include the activity on the DOE CAI as a commercial activity or the decision to exclude the activity from the DOE CAI as an "inherently governmental function." Only the decision to include or to exclude a particular activity from the DOE CAI is subject to challenge. Attempts to challenge other items on the DOE CAI or other decisions related to the inventory will be rejected.

8. The challenge must state the reason or reasons for the challenge, that is, it must explain the reasons why the challenger believes that DOE should change its decision either to include the activity on the DOE CAI as a commercial activity or to exclude the activity from it as an "inherently governmental function."

9. The challenge must include the name of the challenger and the address to which the decision on the challenge should be sent.

CHALLENGE DECISIONS

1. A decision on a challenge will be made within 28 working days from the date that the DOE Office of the Executive Secretariat actually receives the challenge.

2. The decision will be in writing and will:

- a. Identify the activity and the omission/inclusion being challenged;
- b. State whether the challenge is rejected on procedural grounds, or affirmed or denied;
- c. Explain the rationale for the decision; and,
- d. Provide an explanation of the challenger's appeal rights, if the challenge is rejected or denied.

3. Decisions will be transmitted to challengers by United States mail.

APPEALS

1. The specific procedures for submitting an appeal to a decision on a challenge that is rejected or denied will be provided to the challenger in the decision letter.

2. Appeals must be in writing and transmitted by United States mail, express mail delivery or other similar service, or facsimile transmission to:

U.S. Department of Energy

Office of the Executive Secretariat
1000 Independence Avenue, S.W.
Washington, DC 20585
Attn: FAIR Act Inventory Appeal

facsimile transmission telephone number: 202-586-4403

3. Appeals must be submitted to the designated office within 10 working days after the challenger received the decision denying or rejecting the challenge. Decisions on appeals will be in writing and will state the determination and the rationale for it.